IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10080 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TULSI CHUNILAL CHOMAL

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2000

ORAL JUDGEMENT

#. The petitioner has filed this petition under Article 226 of the Constitution of India challenging his order of detention passed by the District Magistrate, Junagadh on 10.8.2000 in exercise of the powers conferred upon him vide section 3(1) of the Gujarat Prevention of Anti

social Activities Act 1985 (PASA Act for short). The petitioner came to be detained on 10.8.2000 in pursuance of the above said order.

#. The detaining authority considered the investigation and the complaint lodged in 3 crimes registered against the petitioner under the Bombay Prohibition Act. The detaining authority also considered the statements of 5 witness who on assurance of secrecy of identity offered their statements against the petitioner to the extent that the petitioner was dealing in and selling of illegal liquor and was a head strong persons and taking up violence when he was opposed by any person. Considering this fact the detaining authority labelled the petitioner as bootlegger within the meaning of section 2(b) of PASA Act. The detaining authority considered that there was no other alternative remedy except passing of the order of detention under the PASA Act to prevent the illegal and anti social activity of the petitioner forthwith.

#. Learned advocate Mr. P.S.Gondalia on behalf of Y.S.Lakhani for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. Amongst the other grounds which were urged to challenge the order of detention it was vehemently urged that the order of detention is vitiated on the ground of delay alone. It was urged that the last offence was registered against the petitioner on 26.3.2000 before Veraval Police Station under the Bombay Prohibition Act. The petitioner was released on bail in the said offence on 7.4.2000 and the order came to be passed only on 10.8.2000. It was urged that the detaining authority only placed reliance on the statements of witnesses recorded on 19.7.2000 who narrated the incident taken place before 2 months from recording of the statements of the concerned witnesses.

#. This court after relying upon the decision of Apex Court in Pradeep Nilkanth vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61 in the matter of Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad City reported in 1997 (1) GLH 381 observed that unexplained delay in passing of the order of detention would vitiate the order of detention of the petitioner.

#. In the present case it clearly appears that the last offence was registered against the petitioner on 23.3.2000. From 7.4.2000 the petitioner was on bail. The order of detention came to be passed only on 10.8.2000. The detaining authority for covering the

period, relied on the statements of the witnesses as recorded on 19.7.2000 who narrated the unregistered crimes committed by the petitioner before 2 months of the recording of the statements of the witnesses. It clearly appears that there is no explanation comingforth from the detaining authority as to why the order of detention came to be passed on 10.8.2000 even when the petitioner was released on bail on 7.4.2000 in the offence last registered against the petitioner. The statements of the witnesses also came to be recorded on 19.7.2000. The incidents are also stale i.e. 2 months prior to the recording of the statements i.e. 19.7..2000. The detaining authority has also not explained this delay in passing of the order even after recording the statements of the witnesses. Apart from that it clearly appears that an attempt has been made to cover up the lapse of time between the passing of the order of detention and registration of the crimes against the petitioner and his release on bail. It clearly appears that an attempt has been made to give life to the stale cases. In this view of the matter the order passed is clearly vitiated by delay and the same is required to be set aside.

#. For the aforesaid reasons the order of detention passed by the District Magistrate, Junagadh on 10.8.2000 against the petitioner under the PASA Act is hereby set aside and quashed. The petitioner-Tulsi Chunilal Chomal is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. D.S. permitted.

(J.R.Vora.J)

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